

Department of Energy

§ 852.16

articles, and the record of any interview with an applicant.

(3) Any other information the panel concludes that the Program Office should have in order to understand the panel's deliberations and determination.

§ 852.13 When must a Physician Panel issue its determination?

(a) A Physician Panel must submit its determination and findings to the Program Office within 20 working days of the time that panel member(s) have received the complete application for review from the Program Office.

(b) The Program Office may extend the deadline for a panel determination under the following circumstances:

(1) The Physician Panel indicates to the Program Office that it needs additional information or a consultation in order to carry out its deliberations, as provided for in § 852.10. In this case, the panel's determination is due 15 working days after receipt of the additional information (or notice from the Program Office that the requested information is unavailable), or 15 working days after receiving the consultant's recommendations, whichever is applicable; or

(2) The Physician Panel has requested and the Program Office has granted an extension.

(c) If an extension is granted pursuant to section 852.13(b)(2), the Program Office will specify the new deadline.

[67 FR 52853, Aug. 14, 2002, as amended at 69 FR 13712, Mar. 24, 2004]

§ 852.14 What precautions must each Physician Panel member and each specialist take in order to keep an applicant's personal and medical information confidential?

In order to maintain the confidentiality of an applicant's personal and medical information, each Physician Panel member and each specialist consulted at the request of a Physician Panel must take the following precautions:

(a) Maintain the confidentiality of applicant records, keep them in a secure, locked location, and, upon completion of panel deliberations, follow the instructions of the Program Office

with regard to the disposal or temporary retention of these records;

(b) Conduct all case reviews and conferences in private, in such a fashion as to prevent the disclosure of personal applicant information to any individual who has not been authorized to access this information;

(c) Release no information to a third party, unless authorized to do so in writing by the applicant; and

(d) Adhere to the provisions of the Privacy Act of 1974 regarding Worker Advocacy Records.

§ 852.15 What actions must a Physician Panel member take if that member has a potential conflict of interest in relation to a specific application?

(a) If a panel member has a past or present relationship with an applicant, an applicant's employer, or an interested third party that may affect the panel member's ability to objectively review the application, or that may create the appearance of a conflict of interest, then that panel member must immediately:

(1) Cease review of the application; and

(2) Notify the Program Office and await further instruction from the Office.

(b) The Program Office must then take such action as is necessary to assure an objective review of the application.

§ 852.16 When may the Program Office ask a Physician Panel to reexamine an application that has undergone prior Physician Panel review?

(a) If a panel composed of a single physician issues a negative determination, the negative determination is considered an initial opinion and the Program Office must direct an additional single-physician panel to review the application and issue an independent opinion. If the second single-physician panel issues a negative determination, the Program Office considers the opinions as a negative determination by the Physician Panel for purposes of § 852.17(a) of this part.

(b) If a second single-physician panel issues a positive opinion, the Program Office must direct an additional single-physician panel to review the application and issue an independent opinion.

§ 852.17

The Program Office reviews the three opinions and considers the majority of the three opinions as the determination by the Physician Panel for purposes of § 852.17(a) of this part.

(c) The Program Office may direct the original Physician Panel or a different Physician Panel to reexamine an application that has undergone prior Physician Panel review if:

- (1) There is significant evidence contrary to the panel determination;
- (2) The Program Office obtains new information the consideration of which would be reasonably likely to result in a different determination;
- (3) The Program Office becomes aware of a real or potential conflict of interest of a member of the original panel in relation to the application under review; or
- (4) Reexamination is necessary to ensure consistency among panels.

[69 FR 13712, Mar. 24, 2004]

§ 852.17 Must the Program Office accept the determination of a Physician Panel?

(a) Subject to the ability of the Program Office to direct a reexamination pursuant to § 852.16, the Program Office must accept the determination by the Physician Panel unless the Program Office determines there is significant evidence contrary to the panel determination.

(b) The Program Office must promptly notify an applicant and the relevant DOE contractor(s) of its acceptance or rejection of a determination by a Physician Panel.

§ 852.18 Is there an appeals process?

(a) An applicant may request DOE's Office of Hearings and Appeals (OHA) to review:

- (1) A decision by the Program Office not to submit an application to a Physician Panel;
- (2) A negative determination by a Physician Panel that is accepted by the Program Office; and
- (3) A final decision by the Program Office not to accept a determination in the applicant's favor by a Physician Panel.

(b) An applicant must file a notice of appeal with OHA on or before 30 days from the date of a letter from the Pro-

10 CFR Ch. III (1–1–06 Edition)

gram Office notifying the applicant of a determination appealable under this section.

(c) An appeal under this section is subject to the procedures of OHA in 10 CFR Part 1003.

(d) A decision by OHA constitutes DOE's final determination with respect to an application.

§ 852.19 What is the effect of the acceptance by the Program Office of a determination by a Physician Panel in favor of an applicant?

In the event the Program Office accepts a determination by a Physician Panel in favor of an applicant:

(a) The Program Office must assist the applicant in filing a claim with the relevant State's workers' compensation system by providing the determination and other information provided to the Program Office by a Physician Panel pursuant to § 852.12 of this part;

(b) The Program Office may not contest the determination;

(c) The Program Office must advise the cognizant DOE Secretarial Officer to recommend to the Contracting Officer (CO) for a DOE contractor that, to the extent permitted by law, the CO direct the contractor not to contest an applicant's workers' compensation claim or award in any administrative or judicial forum with respect to the same health condition for which the applicant received a favorable final Physician Panel determination;

(d) Any costs of contesting a claim or award identified in paragraph (c) of this section—that is, any costs of supporting arguments or activities with the intent or effect of delaying or defeating such a claim or award—are not allowable costs under a DOE contract; and,

(e) All workers' compensation costs incurred as a result of a workers' compensation award on a claim based on the same health condition that was the subject of a positive Physician Panel determination are allowable, reimbursable contract costs to the full extent permitted under the DOE contractor's contract with DOE.